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Nos. 05-908 and 05-915

IN THE

Supreme Court of the United States

PARENTS INVOLVED IN COMMUNITY SCHOOLS,
Petitioners,

v.

SEATTLE SCHOOL DISTRICT NO. 1, ET AL.,
Respondents.

CRYSTAL D. MEREDITH, CUSTODIAL PARENT AND NEXT FRIEND OF JOSHUA RYAN MCDONALD,
Petitioners,

v.

JEFFERSON COUNTY BOARD OF EDUCATION, ET AL.,
Respondents.

On Writs of Certiorari to the United States Courts of Appeal for the Sixth and Ninth Circuits

BRIEF OF THE LAWYERS' COMMITTEE FOR CIVIL RIGHTS OF THE SAN FRANCISCO BAY AREA AS *AMICUS CURIAE* SUPPORTING RESPONDENTS

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INTEREST OF *AMICUS CURIAE*

The Lawyers' Committee for Civil Rights of the San Francisco Bay Area submits this brief *amicus curiae* in support of the respondents in the above-captioned cases and urges affirmance in each of those cases.[1]

[1] Pursuant to Supreme Court Rules 37.3 and 37.6, the undersigned represent that (1) letters by all parties granting blanket consent to the

The Lawyers' Committee for Civil Rights of the San Francisco Bay Area is a civil-rights and legal-services organization devoted to advancing the rights of people of color, low-income individuals, immigrants and refugees, and other underrepresented persons. The Lawyers' Committee was established in 1968 by leading members of San Francisco's private bar.[2]

The Lawyers' Committee has dedicated itself to ensuring equal access to education for all schoolchildren. It served as counsel to the National Association for the Advancement of Colored People in the NAACP's desegregation suit against the San Francisco Unified School District. Throughout the more than 25 years of that litigation, the Lawyers' Committee, relying upon race-conscious remedies that improved the overall quality of the city's schools, worked to advance the right of all San Francisco schoolchildren to an equal education.

Accordingly, the Lawyers' Committee has a unique interest in seeing that the Court is accurately informed about the use and impact of race-conscious remedies in California, and in San Francisco specifically. This brief strives to correct some incorrect impressions left by the dissenting opinion in the Seattle case, and by other *amici*, regarding these subjects.

SUMMARY OF ARGUMENT

Integrated schools are essential to create good citizens in our increasingly diverse society. Teaching children how to

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filing of briefs *amicus curiae* are on file with the Clerk; (2) no counsel for any party authored this brief either in whole or in part; and (3) no person or entity other than the above-named *amicus curiae* and its counsel made any monetary contribution to its preparation or submission.

[2] The Lawyers' Committee is affiliated with the Lawyers' Committee for Civil Rights Under Law in Washington, D.C., which was created at the behest of President Kennedy in 1963.

live with, befriend, and appreciate each other is a compelling state interest in and of itself. Nowhere is this more self-evident than in California, where approximately an eighth of America's schoolchildren (and over a fifth of its minority schoolchildren) are taught. The California experience proves that states and localities need the autonomy to adopt voluntary integration plans to combat segregation.

But some have given the California experience a different interpretation. *Amicus* briefs filed in support of the petitioners theorize that minority academic achievement improved in California because California school districts abandoned race-conscious student-assignment plans wholesale after the enactment of Proposition 209, which prohibits racial discrimination in public education. In a similar vein, the dissenting Ninth Circuit judges in the Seattle case cited San Francisco as an example of successful race-neutral desegregation. See *Parents Involved in Cmty. Schs. v. Seattle Sch. Dist., No. 1*, 426 F.3d 1162, 1215 n.24 (9th Cir. 2005) (en banc) (Bea, J., dissenting), *cert. granted*, 126 S. Ct. 2351 (2006).

The Court should reject such claims, for three reasons.

First, there is a compelling interest in promoting diversity in education—a value recognized by this Court in *Grutter v. Bollinger*, 539 U.S. 306, 330 (2003). We simply cannot afford to become strangers to each other, as will surely happen if our children are raised and educated on starkly isolated racial and socio-economic "islands." Accordingly, states and localities need to retain the autonomy to adopt narrowly tailored student-assignment plans that affirmatively seek to achieve integration and diversity. See Part I, *infra*.

Second, the claim that ignoring race benefited California's minority students rests on the false assumption that Proposition 209 prompted a statewide change in student-assignment policy. In fact, there is no evidence for any such policy

change, and thus no basis for arguing that the alleged policy change improved minority academic achievement. See Part II, *infra*.

Third, if anything, the California experience actually refutes the claim that minority students benefit when school districts abandon race-conscious student-assignment plans. Indeed, the one California district that could serve as a laboratory for testing such a theory—San Francisco—experienced severe resegregation and diminished minority achievement after eliminating racial criteria from the consent decree that governed its student-assignment plan. In fact, the race-neutral plan that San Francisco adopted in 2001 proved so harmful to minority interests that the district court charged with administering the consent decree allowed the decree to expire in 2005, concluding that it had become a vehicle for "court-ordered resegregation." See *San Francisco NAACP v. San Francisco Unified Sch. Dist.*, 413 F. Supp. 2d 1051, 1063 (N.D. Cal. 2005). See Part III, *infra*.

Accordingly, this Court should reject the contention that California's experience proves that race-neutral student assignments result in improved academic achievement or equal education for minority and non-minority schoolchildren. Taking race into account is both a helpful and a legal means of combating segregation and producing healthy school environments in which quality education can take place.

ARGUMENT

The Lawyers' Committee submits this brief to affirm that voluntary integration plans remain necessary to fulfill *Brown*'s promise, and more specifically, to refute the argument that "California has proven that the goal [of improved minority academic achievement] can be achieved through race-neutral means."[3] This view is articulated in *amicus*

[3] Pacific Legal Foundation ("PLF") Seattle Br. at 25.

briefs filed by the Pacific Legal Foundation, which make the following unfounded assertions:

> (1) "For the last ten years, California school districts have been providing equal educational opportunities to all its [sic] K-12 public school students without using race-based assignment plans."[4]
>
> (2) The (supposed) wholesale elimination of racial criteria has improved minority academic achievement in California.[5]
>
> (3) "[T]he answer is to implement race-neutral programs that have a proven track record,"[6] like those supposedly in force in California.[7]

The Court should treat these references to the California experience with skepticism. In the first place, PLF's analysis gives short shrift to the state's compelling interest in promoting diversity in K-12 education. See Part I, *infra*.

Moreover, PLF's analysis rests on the flawed assumption that California experienced a statewide policy change in 1996, with a large number of school districts abandoning race-conscious student-assignment plans *en masse*. But that assumption is simply wrong. In fact, there is no evidence

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[4] PLF Louisville Br. at 26; see also *id.* at 27 ("Since the passage of Proposition 209, California has used race-neutral methods to pursue the goal of providing opportunity for all California's children.").

[5] PLF Seattle Br. at 25, 28-29.

[6] PLF Seattle Br. at 29.

[7] The dissenting Ninth Circuit judges in the *Seattle* case cited San Francisco's student-assignment plan as an example of "race-neutral alternatives" that are "common throughout the United States." *Seattle*, 426 F.3d at 1215 n.24 (Bea, J., dissenting). "Notably," the dissenters observed, "the San Francisco system does not use race as an express criterion for school assignments and thus avoids the sharp focus of strict scrutiny." *Ibid.* (citation and internal quotation marks omitted).

that a statewide policy change occurred, much less that it benefited minority students. See Part II, *infra*.

Finally, the California experience actually refutes the claim that minority academic achievement improves when districts abandon race-conscious student-assignment plans. Indeed, a federal district court found that San Francisco's adoption of a race-neutral student-assignment plan in 2001 resulted in diminished minority achievement and a swift return to severely segregated schools. See Part III, *infra*. Thus, at a time when (according to some) minority academic achievement made some modest *gains* in California as a whole, it *deteriorated* in the one school district known to have adopted a race-neutral student-assignment policy.

I. STATES AND LOCAL GOVERNMENTS MUST RETAIN THE AUTONOMY TO ADOPT MEASURES NARROWLY TAILORED TO ACHIEVE DIVERSITY IN K-12 EDUCATION.

This Court observed over 30 years ago that "local control over the educational process affords citizens an opportunity to participate in decision-making, permits the structuring of school programs to fit local needs, and encourages 'experimentation, innovation, and a healthy competition for educational excellence.'" *Milliken v. Bradley*, 418 U.S. 717, 742 (1974) (citation omitted). "'[L]ocal autonomy of school districts is a vital national tradition.'" *Freeman v. Pitts*, 503 U.S. 467, 490 (1992) (citation omitted). Federal courts therefore "'must take into account the interests of state and local authorities in managing their own affairs, consistent with the Constitution.'" *Id.* at 489 (citation omitted).

These teachings apply with equal force when state and local authorities—based on their intimate knowledge of complex local conditions—voluntarily adopt race-conscious means to integrate their schools. Preparing our children to live happily and peacefully with each other in an increasingly

diverse society is, in and of itself, a compelling governmental interest. Indeed, this Court has recognized and reaffirmed that education is "'the very foundation of good citizenship.'" *Grutter*, 539 U.S. at 331 (quoting *Brown v. Bd. of Educ.*, 347 U.S. 483, 493 (1954)). The *Grutter* decision recognized the importance of exposure to "widely diverse people, cultures, ideas, and viewpoints" and noted that studies have shown that diversity promotes learning and prepares students for a diverse society. 539 U.S. at 330. Although *Grutter* concerned graduate education, its teachings apply even more forcefully to K-12 education, where our children learn the fundamentals of citizenship, responsibility, and social interaction. As the First Circuit recently observed, "under certain conditions, interaction between students of different races promotes empathy, understanding, positive racial attitudes and the disarming of stereotypes." *Comfort v. Lynn Sch. Comm.*, 418 F.3d 1, 14 (1st Cir. 2005) (internal quotation marks and citations omitted), *cert. denied*, 126 S. Ct. 798 (2005).

If achieving integration is a compelling state interest, then states and localities should remain free to use race-conscious student-assignment plans when narrowly tailored to further that interest. As other *amici* demonstrate, student-assignment plans that employ race as one of several factors for consideration can be tailored narrowly enough to withstand strict scrutiny. Moreover—and contrary to the assertions of some *amici*—narrow tailoring can be achieved through race-conscious means and without the prior "exhaustion of every conceivable race-neutral alternative." *Grutter*, 539 U.S. at 339. In contrast, banning race-conscious policies as a tool for achieving integration would, in some instances, foreclose integration altogether—as evidenced by the experience of the San Francisco Unified School District. See Part III, *infra*.

Accordingly, this Court has before it an opportunity to uphold *Brown*'s tenets by reaffirming that separate is not

equal and that local school districts must be granted the latitude to adopt race-conscious means to achieve integration and maintain quality schools.

II. CALIFORNIA HAS NOT ADOPTED RACE-NEUTRAL STUDENT-ASSIGNMENT POLICIES STATEWIDE.

California has not experienced a wholesale abandonment of race-conscious student-assignment plans in the wake of Proposition 209. Nor has there been a related statewide change in minority academic achievement.

The Pacific Legal Foundation hypothesizes that a statewide *change* in California's student-assignment policy—namely, the removal of all racial criteria—caused a related statewide *change* in minority academic achievement. But this theory founders because the supposed statewide policy change never happened. In fact, the only evidence of any policy change consists of two reported decisions concerning, respectively, Huntington Beach[8] and San Francisco.[9] But other prominent California school districts, including Los Angeles and Berkeley, still maintain race-conscious student-assignment plans aimed at achieving integration.

This lack of any uniform shift away from race-conscious student-assignment plans is not surprising. To begin with, Proposition 209, by its terms, does not apply to any race-conscious student-assignment plan that existed when Proposition 209 became effective, if the plan was mandated by a

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[8] See *Crawford v. Huntington Beach Union High Sch. Dist.*, 98 Cal. App. 4th 1275 (2002). The policy change in Huntington Beach occurred only after extensive litigation and affected just one high school where a one-for-one transfer policy had been implemented. *Id.* at 1277-78.

[9] See *San Francisco NAACP*, 413 F. Supp. 2d 1051. The policy change in San Francisco likewise occurred only after extensive litigation. *Id.* at 1055-59.

court order or consent decree. See Neil S. Hyytinen, *Proposition 209 and School Desegregation Programs in California*, 38 San Diego L. Rev. 661, 677-81 (2001).[10]

The legal effect of Proposition 209 on *voluntary* school-desegregation plans remains an open question. At present, there is only one published California appellate decision—from an intermediate court—applying Proposition 209 to a voluntary school-desegregation plan; and that decision turned upon the specific characteristics of the challenged plan. See *Crawford v. Huntington Beach Union High Sch. Dist.*, 98 Cal. App. 4th 1275, 1278 (2002). But more recently, a trial court upheld a race-conscious Berkeley plan on the ground that it "does not discriminate against, or provide preferential treatment to, any student based on race. It merely considers race and ethnicity as one of multiple factors in seeking to achieve desegregated schools for all students." *Avila v. Berkeley Unified Sch. Dist.*, No. RG03-110397 at 10 (Cal. Super. Ct. Alameda County Apr. 6, 2004) (order granting demurrer of defendants Berkeley Unified School District and Michele Lawrence) [hereinafter *Avila* order].[11]

In sum, PLF's unsupported assumptions undermine the attempt to cite the California experience as evidence that

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[10] One provision of Proposition 209 states: "Nothing in this section shall be interpreted as invalidating any court order or consent decree which is in force as of the effective date of this section." Cal. Const. art. I, § 31(d).

[11] The Berkeley trial court noted that the *Crawford* court had not been asked to apply caselaw that would have required it to "harmonize new and existing constitutional provisions." *Avila* order at 10. Accordingly, the *Crawford* decision made no attempt to harmonize Proposition 209 with preexisting state-constitutional provisions and caselaw that require school boards to attempt to alleviate segregation. The trial court in the Berkeley case thus distinguished the *Crawford* decision on its facts while casting doubt on the thoroughness of *Crawford's* legal analysis. No party appealed from the Berkeley decision (which, concededly, is non-precedential under California law).

race-neutral student-assignment plans improve minority academic achievement. Tellingly, PLF makes no mention of what happened in San Francisco—the only California school district for which there is actual data on the educational impact of dropping racial factors from a student-assignment plan. As discussed below, the San Francisco experience not only refutes PLF's claim, but confirms the pernicious impact of removing race-conscious remedies.

III. RACIAL INTEGRATION AND MINORITY ACADEMIC ACHIEVEMENT DETERIORATED IN SAN FRANCISCO AFTER IT ELIMINATED RACIAL CRITERIA FROM ITS STUDENT-ASSIGNMENT PLAN.

As we have seen, unsupported assumptions undermine the theory that minority academic achievement improves when school districts terminate policies that seek to integrate public schools. There is, for example, no evidence that *any* statewide change in student-assignment policy occurred after California adopted Proposition 209; and there is therefore no basis for arguing that such a change caused a statewide change in minority academic achievement.

But there *is* one California school district that furnishes an opportunity to test that theory. That district is San Francisco, where racial factors were eliminated from the student-assignment plan in 2001—not as the result of Proposition 209, but as part of the district's settlement with a class of Chinese-American parents.[12] Due to the conscientious efforts of San Francisco's consent-decree monitor, this policy change has generated some useful data[13] as well as some pointed

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[12] *Ho v. San Francisco Unified Sch. Dist.*, No. C-94-2418-WHO (N.D. Cal.).

[13] The reports of the consent-decree monitor are available at http://www.gseis.ucla.edu/courses/edlaw/sfrepts.htm.

judicial findings based on that data.[14] Those data and findings tend to refute the theory, not support it.

A. Between 1983 and 1999, San Francisco's race-conscious student-assignment plan largely desegregated its schools and promoted academic excellence throughout the district.

From 1983 to 1999, the San Francisco schools operated under a consent decree whose goal was "'to eliminate racial/ethnic segregation or identifiability in any District school program or class and to achieve throughout the system the broadest practicable distribution of students from nine racial and ethnic groups.'" *San Francisco NAACP*, 413 F. Supp. 2d at 1054 (citation omitted).[15]

Under the 1983 consent decree, the district adopted guidelines to prevent any racial/ethnic group from exceeding 45% of the student body at any regular school or 40% at any "alternative" school. *Ibid.* The decree also designated 19 historically segregated schools for special desegregation treatment and identified certain schools in the predominantly African-American Bayview-Hunter's Point neighborhood for reconstitution and conversion into magnet schools. *Ibid.*

The district court that administered the consent decree found that, before San Francisco removed racial factors from the decree, its student-assignment plan had "succeeded in promoting integration and academic excellence throughout the district." *Id.* at 1055. At "the apex of integration," during

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[14] See *San Francisco NAACP*, 413 F. Supp. 2d at 1052-59.

[15] The full history of the San Francisco schools litigation has been detailed elsewhere. See, *e.g.*, *San Francisco NAACP*, 413 F. Supp. 2d at 1052-59; Leslie Fulbright & Heather Knight, *With More Choice Has Come Resegregation*, S.F. Chron., May 29, 2006, at A-1. Here, we present only those facts bearing on PLF's theory that eliminating race-conscious remedies improves minority educational achievement.

the 1997-98 school year, only 30 regular district schools and six alternative schools (out of 122 schools total) failed to comply with the 45% / 40% requirement, and only one school enrolled more than 50% of a single race/ethnicity. *Ibid.* Standardized test scores increased seven years in a row between 1992 and 1999. Reading scores increased for students of every race and ethnicity, with the exception of a slight drop for Korean American students; and math scores also increased for students of every race and ethnicity, with the exception of a slight drop for Native American students. *Ibid.*

B. After San Francisco eliminated race from its student-assignment plan in 2001, its schools resegregated and minority academic achievement suffered.

In 1999 and again in 2001, the consent decree was modified as part of the district's settlement with a class of Chinese-American parents ("the *Ho* settlement"). *See San Francisco NAACP*, 413 F. Supp. 2d at 1057-58. Beginning in 2001, the decree featured a new student-assignment plan in which race no longer played any role. *Id.* at 1058.

The current, race-neutral plan works as follows. Students are eligible to attend any school in the district. First, applicants with a sibling already attending the desired school are admitted automatically. Second, students with specialized learning needs—*e.g.*, for English proficiency or special education—are assigned automatically to their desired schools with the program meeting those needs.[16]

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[16] See "Excellence for All: A Five-Year Comprehensive Plan to Achieve Educational Equity in the San Francisco Unified School District for School Years 2001-02 to 2005-06" (Apr. 4, 2001) at 98-99, available at http://www.sfusd.edu/news/pdf/X4Allrev021302.pdf#search=%22sfusd%20excellence%20for%20all%20plan%22 [hereinafter 2001 Plan].

All students who are not assigned in either of these steps are assigned according to a six-factor "Diversity Index." In this process, each student obtains a numerical profile based on his or her socioeconomic status, academic achievement status, mother's educational background, language status, academic performance index, and home language.[17]

If more seats are available at a grade level in a school than the number of applicants for that school, then the student is tentatively admitted.[18] If the school is also the student's first choice, then the student is assigned to that school without resorting to the index.[19] But if there are fewer seats available at a school than the number of applicants, then for each oversubscribed class at that school, a complicated computerized formula uses Diversity Index scores as the basis for assigning students to that school.[20]

Although the "diversity index" represented a sincere effort to maintain diversity in San Francisco's public schools, it failed to achieve that objective. Instead, the new race-neutral system resulted in resegregated schools and a relative decline in minority academic achievement. As a result, in November of 2005, the district court that administered the consent decree refused to extend the decree on the ground that "[t]he perpetuation of resegregation allowed, if not caused, by the decree itself would be contrary to the public interest. In effect, due to the *Ho* settlement * * *, the decree has transformed itself into court-ordered resegregation." *San Francisco NAACP*, 413 F. Supp. 2d at 1063.

The district court concluded that, "[u]ndoubtedly, the San Francisco Unified School District is resegregated today. This

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[17] 2001 Plan at 100-03.

[18] 2001 Plan at 100-01.

[19] 2001 Plan at 100-01.

[20] 2001 Plan at 100-03.

segregation can be measured both across schools and within individual school programs." *Id.* at 1067. And the district court expressed its firm conviction that segregation across schools could be traced directly to San Francisco's adoption of a race-neutral student-assignment system: "[T]he current segregation across schools is * * * a result of the evolution of the consent decree itself. If anything, the revised student-assignment plan imposed by the consent decree (with its so-called diversity index) has been the main culprit." *Id.* at 1068.

In support of these conclusions, the district court cited statistics from the consent-decree monitor's reports showing that the race-neutral student-assignment plan had resulted in a sharp and immediate trend toward resegregation that only worsened over time. During the 2001-02 school year, 30 schools were severely resegregated at one or more grade levels—meaning that 60% or more of the students in those grades were of one race/ethnicity. *Id.* at 1059 & n.9. By the 2004-05 school year, this number had risen to 43, with 27 schools resegregated at all grade levels. *Id.* at 1059. Thus, the district court concluded that, "[t]oday, over one in three San Francisco public schools is resegregated, largely as a result of the student-assignment system adopted by the [*Ho*] parties and written into the consent decree." *Ibid.* By the time the consent-decree monitor filed his final report in late December 2005, these figures had become even more dire, with completely resegregated schools reaching approximately 50 in number "for the first time in this era."[21]

The district court's November 2005 decision also concluded that "[a]cademic achievement data indicate a close relationship between resegregation and the disparity in

[21] Final Supplemental Report of Consent Decree Monitor (Dec. 28, 2005) at pp. 3-4, available at http://www.gseis.ucla.edu/courses/edlaw/Final%20SF%20Supp%20Rept.pdf#search=%22sfusd%20consent%20decree%20biegel%22.

academic achievement between black and Latino students in comparison with white and Chinese-American students." *San Francisco NAACP*, 413 F. Supp. 2d at 1059. The court observed that "[t]he overwhelming majority" of schools that had succeeded in closing the achievement gap—measured by the large percentages of students of all ethnic backgrounds who scored "proficient" or above on state standardized tests—were ones that had maintained "ethnically and racially-diverse student bodies." *Ibid.* (citation omitted).

For example, the consent-decree monitor's report showed that, at the integrated Claire Lilienthal elementary school, the percentage of students scoring "proficient" or above in English on the California Standards Test was 65.5% for all students and 61.5% for Latino students—an "achievement gap" of just 4%.[22] The figures were 67% and 61.5% for math, respectively—an achievement gap of just 5.5%.[23] And Lilienthal was a portrait of integration: 17.5% African American, 13.3% Korean American, 28.4% White, and 11.5% Latino.[24]

Similarly, at the Gateway High School, the percentage of students scoring "proficient" or above in English was 62.8% for all students and 63.6% for African American students.[25] So, on average, African American students outperformed

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[22] Supplemental Report of Consent Decree Monitor Regarding the Achievement Gap and Related Issues (Mar. 2004), at p. 10, available at http://www.gseis.ucla.edu/courses/edlaw/304supp-rpt.pdf [hereinafter March 2004 Report].

[23] *Ibid.*

[24] *Id.* at 11. These figures sum to 70.7%. The remaining 29.3% was comprised of Chinese Americans (9.4%), Japanese Americans (1.0%), American Indians (1.3%), Filipino Americans (1.3%), other non-Whites (10.5%), and students who declined to state their race (5.7%). See SFUSD School Profile for Claire Lilienthal Elementary School (Fall 2003), available at http://orb.sfusd.edu/profile/pf03/pf03-479.htm.

[25] *Id.* at 10.

their classmates in English proficiency. Gateway, too, was integrated, with a student body that was 13.5% African American, 32.8% White, 23.5% Latino, and 13% "other non-White."[26] In all, the consent-decree monitor identified 13 schools that had "done a notable job of closing the achievement gap at their sites";[27] and "[a]ll but one" of those schools were ones that had "maintained substantially racially and ethnically diverse student populations."[28]

In contrast, the schools that had become resegregated were marked by declining standardized-test scores, as measured by the Academic Proficiency Index, or "API."[29] *See San Francisco NAACP*, 413 F. Supp. 2d at 1059. For example, all of the elementary schools in the Bayview-Hunter's Point neighborhood that had a predominantly black enrollment had an API score of 1, "the lowest possible ranking." *Ibid.* The district court observed that the "[r]esegregated schools also have the most significant achievement gaps." *Ibid.*

Perhaps the strongest evidence of the academic impact of San Francisco's public-school resegregation comes from the annual "Adequate Yearly Progress" reports compiled by the California Department of Education. Among other things, these district-by-district reports track the percentage of students, by racial group, who score "proficient" or above on California's standardized tests.

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[26] *Id.* at 11. These figures sum to 82.8%. The remaining 17.2% was comprised of Chinese Americans (9.5%), Japanese Americans (0.7%), Korean Americans (0.5%), American Indians (0.5%), Filipinos (2.1%), and students who declined to state their race (4.0%). See SFUSD School Profile for Gateway High School (Fall 2003), available at http://orb.sfusd.edu/profile/pf03/pf03-565.htm.

[27] *Id.* at 9.

[28] *Id.* at 11.

[29] The API is a school-ranking system based on standardized test scores. See http://www.monet.k12.ca.us/mcsnew/departments/assessment/API/API Overview.htm.

These figures chronicle a shocking increase in the "achievement gap" between African American students and other students between 2002 and 2006, when San Francisco schools were resegregating. In those years, the "gap" between the percentage of African American students and the percentage of White students scoring "proficient" or above in English Language Arts climbed from 19.3% to 49.1%. In part, this widening gap reflects the fact that African American English proficiency actually declined on an absolute basis, from 33% to 22.7%. In math, although African American proficiency improved from 9.7% to 21.2%, the "gap" between African American students and Asian American students climbed from 48.8% to 57.7%.[30]

As the San Francisco experience illustrates, when local authorities are denied the autonomy to adopt race-conscious student-assignment plans, integration may become nearly impossible to achieve. If integration is a compelling state interest, then states and localities must retain the autonomy to adopt narrowly tailored plans, which include racial factors, to further that interest.

CONCLUSION

For all the reasons stated above, this Court should reaffirm a state's compelling interest in achieving school integration and should reject the unsupported claim that minority students benefit when race-conscious student-assignment policies are eliminated. Indeed, in San Francisco—the one

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[30] The 2002 Adequate Yearly Progress Report for San Francisco is available at http://dq.cde.ca.gov/dataquest/AYP/2003AYP_Dst.asp?cSelect=3868478%A0--%A0SAN+FRANCISCO+UNIFIED&cChoice=AYP02_dst&cYear=&cLevel=District&ctopic=AYP&myTimeFrame=S&submit1=Submit.

The 2006 report is available at http://dq.cde.ca.gov/dataquest/APIBase2006/2006APR_Dst_AYP_Report.aspx?allcds=3868478.

place in California where race-conscious remedies were eliminated and data is available—the story is a troubling one of severe resegregation and deteriorating minority achievement.

Respectfully submitted,

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